

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

TONYA GARVIN,)	
)	
Plaintiff,)	
)	
v.)	1:07CV244
)	
CERTAINTIED CORPORATION,)	
)	
Defendant.)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on Defendant's motion to dismiss with prejudice for Plaintiff's failure to prosecute this action and to abide by an order of the Court. (Docket No. 52.) Plaintiff has filed a response in opposition and Defendant has filed a reply. The motion to dismiss is ready for a ruling. For reasons set forth below, the Court finds that the motion to dismiss with prejudice should be granted.

The Court's prior orders in this case (Docket Nos. 43 and 50) describe the manner in which Plaintiff has failed to prosecute this action in reasonable accord with the Federal Rules of Civil Procedure. For her unexcused failures and defaults, Plaintiff (individually, not counsel) was sanctioned by the court and ordered to pay the sum of \$7,535.12 to Defendant's counsel. In its Sanction Award of June 12, 2008, the Court wrote that: "Plaintiff Garvin shall pay the sanction award within 30 days of this Order or this action may be dismissed for failure to prosecute and to abide by an order of the Court."

The motion to dismiss filed by Defendant Certaineed Corporation informs the Court that Plaintiff has failed to comply, in full or even in part, with the Court's sanction award. The briefing record on the motion shows that neither Plaintiff nor counsel for Plaintiff has (1) contacted Defendant to discuss payment, (2) requested additional time to pay, (3) produced even one document as an initial disclosure, or (4) produced even one document in response to document requests. In response to Defendant's motion to dismiss, Plaintiff says only that "she has tried and continues to try to obtain funds Ordered by the Court but due to circumstances beyond her control has not yet been able to do so." (Docket No. 54.) Plaintiff's provides no supporting financial information.

The Court finds that Plaintiff has not complied with the Order of June 12, 2008, and has made no substantial effort to prosecute this action in accordance with the federal rules or the orders of this Court. *See* Fed. R. Civ. P. 41(b). Accordingly, **IT IS RECOMMENDED** that Defendant's motion to dismiss (Docket No. 52) be granted, and that this action be dismissed with prejudice.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: August 18, 2008